IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 9248 of 2002

Between:

M/s. Sai Food Products rep. by its Proprietor L.Hanumantha Rao
S/o. Venkateswarlu, R/o D.No.712, Main Road,
Sattenapalli, Guntur District.

..... PETITIONER

AND

1 The A.P.Industrial Infrastructure Corporation Limited
rep. by its Zonal Manager,
Vijayawada, Krishna District.
2 The Estate Officer,
O/o. The Manager (Recoveries), TR&B (B-II) Department,
A.P.Industrial Infrastructure Corporation Limited, Fateh Maidan Road,

Hyderabad-4.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ order or direction declaring the action of the respondents in putting lock and seal to the petitioner unit under Notice dated 3-5-2002 as illegal, arbitrary and without jurisdiction and direct the respondent to remove the lock and seal to the petitioner unit.

Counsel for the Petitioner: SMT.G.JYOTHI KIRAN

Counsel for the Respondent Nos.1&2: MR.R.SUBBA RAO

The Court made the following:

ORDER:

The petitioner questions the notice dated 3.5.2002 issued by the first respondent in taking possession of the shed No.4-A, Industrial Estate, Sattenapalli, by the A.P.Industrial Infrastructure Corporation Limited as the ownership of the shed lies with it.

The petitioner is the allottee of shed No.4-A in the Industrial Estate at Sattenapalli, on outright sale basis and, accordingly, sale agreement was executed on 22.11.1995 on paying 30% of the initial provisional cost and the balance of 70% provisional cost of the shed amounting to Rs.2,83,991.40 is payable by the petitioner for which he executed promissory note in favour of the first respondent. The amount is payable within six months from the date of execution of promissory note along with interest at 19% per annum for one year and thereafter with interest at 24% per annum. It is stated that as per the sale agreement dated 22.11.1995 time is the essence of the contract. Pursuant to the sale agreement, the petitioner was running an industry in the said shed allotted to him by the first respondent Corporation. It is stated that the petitioner failed to pay the balance 70% of the cost to the Corporation and the petitioner failed to avail interest waiver benefit duly complying with the conditions of the scheme evolved by the Corporation.

As the petitioner failed to pay the balance and also failed to avail the waiver of interest, demand notice/show cause notices dated 22.2.1996, 5.3.1997, 20.5.1997 and 29.10.1997 are issued to the petitioner and he failed to submit any reply and, therefore, the allotment made in favour of the petitioner was cancelled by the respondent Corporation for breach of conditions of the agreement vide cancellation order dated 8.1.1998 duly determining the sale agreement and forfeiting the amounts paid by him towards use and occupation of the shed. The petitioner was also called upon to hand over vacant possession of the shed vide notice dated 28.1.1998.

The petitioner submits that he was not able to run the unit on cost-to-cost basis also and he could not earn any profits to pay the balance sale consideration along with interest and he made a representation for waiver of interest. But the said waiver of interest was not considered and the respondents are initiating action for his eviction under A.P.Public Premises (Eviction of Unauthorised Occupants) Act, 1968 (hereinafter referred to as 'the Act'), which is not applicable to the case of the petitioner, as he was only an agreement holder. Therefore, he filed O.S.No.359 of 2000 on the file of Principal Junior Civil Judge, Sattenapalli seeking permanent injunction and it was dismissed in view of Section 11 of the Act as the jurisdiction of the Civil Court is barred. The respondents all of a sudden locked the unit on 3.5.2002 by issuing the said notice.

On the other hand, the learned counsel appearing for the first respondent submits that the petitioner while enjoying the possession of the shed of the Corporation for running the industry has failed to pay the balance shed cost in spite of issuing demand notices/show cause notices for which no reply was filed and the agreement of sale was also cancelled by order dated 8.1.1998 and the petitioner was not even challenged the same. The petitioner was also called upon to hand over vacant possession of the shed vide notice dated 28.1.1998 and at this juncture the petitioner paid Rs.8,000/- to the Corporation which was accepted without prejudice to the cancellation orders dated 8.1.1998. The petitioner was again requested to

surrender vacant possession of the shed on or before 25.3.1998 to the Corporation and again the petitioner paid Rs.5,000/- on 12.3.1998 which was also accepted without prejudice to the cancellation orders. Thereafter, the petitioner issued a legal notice on 25.3.1998 requesting the Corporation to accept the arrears in instalments. Even the said request made by the petitioner was not adhered to and he has not paid the instalments as offered to be paid by him. As the petitioner was in illegal occupation of the said shed, the Corporation referred the matter to the Estate Officer under the Act for initiating necessary action against him for evicting him from the shed of the Corporation, which is a public premises. The Estate Officer, the 2nd respondent herein, issued show cause notice dated 8.9.2000 under Section 4(1) of the Act calling upon the petitioner to show cause as to why the order of eviction should not be passed against him. The petitioner has not filed any explanation and on the other hand he filed O.S.No.359 of 2000 on the file of the Principal Junior Civil Judge, Sattenapalli, for permanent injunction, which was dismissed in view of Section 11 of the Act the Civil Court cannot grant any relief. The Estate Officer issued notice dated 22.10.2001 to the petitioner granting him an opportunity of personal hearing on 1.11.2001. Meanwhile, the petitioner filed C.M.A.No.31 of 2001 on the file of the Principal Senior Civil Judge, Narasaraopet, against the orders dated 23.7.2001 in I.A.No.1613 of 2000 in O.S.No.359 of 2000 and expressed his readiness to appear before the 2nd respondent. The petitioner appeared before the 2nd respondent on 1.11.2001 and agreeing to pay the dues to the Corporation subject to outcome in C.M.A.No.31 of 2001. But he has not paid the said amount. Therefore, after following the due procedure under the Act, the 2nd respondent passed eviction orders dated 3.1.2002 under Section 5(1) of the Act directing the petitioner to vacate from the shed and the notice dated 3.5.2002 is only consequential notice for implementing the evicting orders passed by the 2nd respondent. The petitioner is not entitled for any of the relief as the said orders passed by the respondent have become final and not challenged at all by the

petitioner and having filed the said C.M.A.No.31 of 2001 which is still pending, he cannot seek parallel proceedings invoking writ jurisdiction under Article 226 of the Constitution of India.

It is stated that 70% of the shed cost along with interest, maintenance charges and property tax as on 31.3.2002 is Rs.6,32,261. 47 ps., and the petitioner illegally occupying the shed of the Corporation for running his industry, he failed to stick to the conditions of agreement dated 22.11.1995, which culminated into cancellation of allotment by the Corporation, and finally evicting him by following the due process of law and merely because the petitioner has depositing the amount of Rs.1,40,000/- subsequent to the orders after the stipulation period, the petitioner is not entitled to any relief.

Therefore, I am of the opinion that the action of the respondents is not arbitrary or illegal and only as per the terms and conditions of the agreement and the petitioner has not questioned the order of cancellation as well as the eviction orders, which have become final, the petitioner is not entitled to any relief in this writ petition.

The writ petition is, accordingly, dismissed. No order as to costs.

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(V.ESWARAIAH, J.)

28.3.2005

kpr

To

1 The Zonal Manager, A.P.Industrial Infrastructure Corporation Limited
Vijayawada, Krishna District.
2 The Estate Officer,
O/o. The Manager (Recoveries), TR&B (B-II) Department,
A.P.Industrial Infrastructure Corporation Limited, Fateh Maidan Road,

Hyderabad-4.

3. 2 C.D. copies